IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2) (b)]
Description of case

Civil Revision No. 33 of 2005 **Decided on : 8th March, 2006**

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date 08.03.2006

(Initial of Judge)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 33 of 2005

Sri Satish Chand S/o Sri Atma Ram
R/o A-2, Nehru Nagar Colony,
Dharampur, Dehradun
Present address Jackpot Video Games,
Shop No. 9, New Market,
Dharampur Chowk, Dehradun.

..... Revisionist

Versus

Sri Ram Lal S/o late Shri Jagat Pal
R/o 12 Race Course,
Dehradun.

..... Respondent

Mr. V.K. Kohli, Sr. Advocate assisted by
Mr. I.P. Kohli, learned counsel for the revisionist.
Mr. Lok Pal Singh, learned counsel for respondent.

Hon. Prafulla C. Pant, J.

This revision, preferred under Section 25 of the Small Cause Courts Act, 1887, is directed against the order dated 23.04.2005, passed in S.C.C. Suit No. 26 of 2002, between the parties, whereby the defence of the defendant / revisionist has been struck off under Order 15 Rule 5 of the Code of Civil Procedure, 1908 (as amended by State of U.P., applicable to the State of Uttaranchal).

2) Heard learned counsel for the parties.

3) Brief facts of the case are that plaintiff / respondent is landlord of the house in question and the defendant / revisionist is tenant in the said house. The plaintiff has instituted a suit under Section 20 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 for ejectment and arrears

of rent and mesne profits. It appears that during the pendency of suit before the trial court, an application No. 55-C was moved by the landlord for striking off the defence of the defendant under Rule 5 of Order 15 of the aforesaid Code, on the ground that the defendant has failed to pay the dues required to be paid under said Rule.

4) Sub-Rule (1) of Rule 5 of Order 15(as amended by State of U.P.) of the Code of Civil Procedure, 1908, reads as under:

> *"5.* ***Striking off defence for failure to deposit admitted rent .*** *– (1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent per annum and whether or not he admits and amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the court may, subject to the provisions of sub-rule (2) strike off his defence.*
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> *Explanation 1- The Expression "first hearing" means the date for filing written statement for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.*

Explanation 2. –The expression "entire amount admitted by him to be due" means the entire gross amount, whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account [and the amount, if any, paid to the lessor acknowledged by the lessor in writing signed by him] and the amount, if any, deposited in any Court under section 30 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

Explanation 3. –(1) The expression "monthly amount due" means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account."

The language of the aforesaid Rule doe snot indicate if electricity charges are required to be paid by the tenant in compliance of aforesaid Rule.

5) Learned counsel for the respondent has drawn attention of this Court that there was an agreement dated 14.09.1998 executed between the parties (a copy of which has been filed in this revision), the term No. 5 of which makes it incumbent on the tenant to pay bills of electricity. By said term, it cannot be said that the electricity charges are part of the rent or that of compensation, as it is not a case of the landlord that he had to make payment of the electricity bill. In ***Ved Prakash Tyagi Vs. Ist Additional District Judge, Pilibhit and others reported in***

2000 (1) Allahabad Rent Cases pg. 384, Allahabad High Court has expressed the view, while interpreting the work ‘rent’ that electricity charges do not form part of it.

6) In view of the provisions contained in Rule 5 of Order 15, quoted above, and the principle of law laid down, as discussed above, this Court is of the view that the learned trial court has erred in law in striking off the defence of the defendant (tenant) under Rule 5 of Order 15 of the aforesaid Code, on the ground that the defendant failed to pay the electricity charges.

7) Therefore, this revision succeeds and is allowed. The impugned order dated 23.04.2005 is said aside. The interim stay order passed by the Court on 18.05.2005 is vacated. The trial court is directed to proceed with the suit as expeditiously as possible.

(**Prafulla C. Pant, J.**)

Dt. March 08, 2006
H. Negi